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DISTRICT OF UTAH
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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MISIONA PATANE JR.,

Defendant.

Case: 2:09cr00903

Assigned To : Kimball, Dale A.

Assign. Date : 12/2/2009

Description: SEALED

FELONY INFORMATION

Vio. 18 U.S.C. § 1343 (Wire Fraud);
18 U.S.C. § 2 (Aiding, Abetting, and
Causing)

SEALED

The United States Attorney charges:

BACKGROUND

At all times relevant to this Felony Information:

Scheme Participants

1. UNINDICTED COCONSPIRATOR 1 was a resident of Salt Lake County, Utah, and was the owner and operator of Tradewest Development, a business that built single-family homes in and around the Salt Lake Valley.

2. UNINDICTED COCONSPIRATOR 2 was a resident of Davis County, Utah, and was involved in the business of brokering loans and promoting real estate development projects along the Wasatch Front through a company known as Kennedy Family Homes, LLC.

UNINDICTED COCONSPIRATOR 2 also maintained business bank accounts at Bank of the West in the names of Spyglass Properties, LLC and Tradewest Homes, Inc..

3. Defendant MISIONA PATANE JR. (defendant PATANE), a resident of Salt Lake County, Utah, had a masters degree in business administration, worked as an operations manager, and was engaged in the business of monitoring construction project progress, controlling costs, and ensuring proper use and disbursement of project loan funds.

4. R.P. was a resident of Utah County, Utah, and was the owner and operator of two construction companies organized in the State of Utah named "Pyramid Youth Services LLC", doing business as "Pyramid Building and Construction" (Pyramid) and "AMT Construction." R.P. maintained bank accounts in the names of Pyramid and AMT Construction at Zions First National Bank and Bank of American Fork.

Scheme Victim

5. Arkansas National Bank (ANB) was a financial institution as defined by 18 U.S.C. § 20, the deposits of which were insured by the Federal Deposit Insurance Corporation (FDIC). ANB was a nationwide banking company with its principal office in Little Rock, Arkansas, and which maintained an office located at 929 West Sunset Boulevard, Suite 21, in St. George, Utah. ANB was involved in the business of funding construction mortgage loans secured by real estate and projects developed on those properties. As described below, the funding of ANB construction loans was dependent and conditioned upon borrowers providing truthful and accurate loan application and loan disbursement information, along with adequate documentation which met ANB's underwriting standards.

The Project

6. UNINDICTED COCONSPIRATOR 1 and UNINDICTED COCONSPIRATOR 2, with others, formed a new real estate development venture to focus on the development of single-family housing projects under the name "Tradewest Homes, LLC" (Tradewest Homes). At various points in time, UNINDICTED COCONSPIRATOR 1 and UNINDICTED COCONSPIRATOR 2 transferred into Tradewest Homes more than 60 unfinished single-family home projects with the aim of obtaining financing and finishing the projects.

7. UNINDICTED COCONSPIRATOR 1 and UNINDICTED COCONSPIRATOR 2 subsequently formed an entity called “Spyglass Properties” with the aim of developing and building a multi-family condominium project located on West North Temple Street in Salt Lake City, Utah. This project was referred to internally as the “Kennedy Town Center project” (at times, also referred to as the “Spyglass Properties project” or the “North Temple project”). As part of the Spyglass/Kennedy Town Center project, UNINDICTED COCONSPIRATOR 1 and UNINDICTED COCONSPIRATOR 2 sought to develop an eighty (80) unit condominium project located at approximately 644 West North Temple Street in Salt Lake City, Utah. Once formed, defendant PATANE was retained by UNINDICTED COCONSPIRATOR 1 and UNINDICTED COCONSPIRATOR 2 to serve as the operations manager of Tradewest Homes and the Spyglass/Kennedy Town Center project, and facilitating the use of related loan funds.

The Construction Loan Application, Approval, and Disbursement Process

8. As part of the construction loan mortgage application process, ANB requested a loan application which accurately reflected a borrower’s assets, income, and liabilities in order to make complete and knowledgeable lending decisions. ANB also required as phases of construction were completed and disbursement of additional funds were needed to pay subcontractor costs and materials, the submission of truthful and accurate invoices and engineering certifications, verification of work done by subcontractors, and any payments to subcontractors. Moreover, ANB required as a condition of funding a construction loan that the loan proceeds be dedicated solely to the project on which the loan was made.

THE SCHEME AND ARTIFICE TO DEFRAUD

9. Beginning sometime on or about January 2007 and continuing to about the Summer of 2008, in the Central Division of the District of Utah, and elsewhere,

MISIONA PATANE JR.,

defendant herein, together with COCONSPIRATOR 1, COCONSPIRATOR 2 and others,

devised and executed, and attempted to devise and execute, and did aid and abet each other therein, a scheme and artifice to defraud and to obtain money and property from ANB by means of false and fraudulent pretenses, representations, and promises and omissions of material facts by obtaining approval of, and disbursements from, a real estate construction loan from ANB, as detailed below. In executing and attempting to execute the scheme and artifice to defraud, the defendant and others:

- a. knowingly transmitted and caused to be transmitted, by means of wire communications in interstate commerce, writings, signs, signals, pictures, and sounds, in violation of 18 U.S.C. § 1343 (Wire Fraud);
- b. knowingly, in the circumstance that the offense took place in the United States, conducted and attempted to conduct financial transactions with the proceeds of specified unlawful activities (to wit. mail fraud and wire fraud), with the intent to promote the carrying on of specified unlawful activity, and with the intent to conceal or disguise the nature, source, location, ownership and control of funds involved in the financial transactions, in violation of 18 U.S.C. §§ 1956 (a)(1)(A)(i) and (a)(1)(B)(i) (Money Laundering); and
- c. knowingly, in the circumstance that the offense took place in the United States, engaged and attempted to engage in the monetary transactions in criminally derived property, each of which transactions was of a value greater than \$10,000.00 and was derived from specified unlawful activity, namely, proceeds of fraudulently obtained ANB loans in violation of 18 U.S.C. § 1957 (Money Laundering).

OBJECT OF THE SCHEME AND ARTIFICE TO DEFRAUD

10. It was the object of the scheme and artifice to defraud for UNINDICTED COCONSPIRATOR 1, UNINDICTED COCONSPIRATOR 2, and defendant PATANE fraudulently to obtain money and property of ANB by inducing ANB through false statements, misrepresentations, deception, and omissions of material facts to fund a series of construction loan disbursements, resulting in the diversion of construction loan proceeds to the defendant and his associates and assigns for uses and purposes other than for the Spyglass/Kennedy Town Center project.

MANNER AND MEANS OF THE SCHEME AND ARTIFICE TO DEFRAUD

11. It was a part of the scheme and artifice to defraud that UNINDICTED COCONSPIRATOR 1 and UNINDICTED COCONSPIRATOR 2 formed Spyglass Properties, and that through Spyglass Properties, they applied for a construction loan with ANB for the purpose of purchasing and developing a 1.7 acre parcel of unoccupied property located at approximately 644 West North Temple Street in Salt Lake City, Utah (the "property"). This development became known as the Spyglass/Kennedy Town Center project.

12. It was further a part of the scheme and artifice to defraud that UNINDICTED COCONSPIRATOR 1 and UNINDICTED COCONSPIRATOR 2 applied to ANB for a construction loan totaling approximately eighteen million dollars (\$18,000,000) ostensibly to acquire the property and build the Spyglass/Kennedy Town Center project. UNINDICTED COCONSPIRATOR 1 and UNINDICTED COCONSPIRATOR 2 further caused to be open a bank account in the name of 'Spyglass Properties' at ANB into which proceeds of the Spyglass/Kennedy Town Center construction loan would be disbursed.

13. It was further a part of the scheme and artifice to defraud that, having applied to ANB as a lender on the Spyglass/Kennedy Town Center project in order to obtain approval of a loan to acquire the property and build the Spyglass/Kennedy Town Center project, UNINDICTED COCONSPIRATOR 1 and UNINDICTED COCONSPIRATOR 2 assured ANB that the proceeds of the loan would be used solely for the purchase of the property and the construction and building of the eighty (80) unit condominium project. The ANB loan was structured so that the construction loan proceeds would be released in phases based on invoices and periodic engineering certifications submitted to ANB confirming that the previous phase of construction had been properly completed. UNINDICTED COCONSPIRATOR 1, UNINDICTED COCONSPIRATOR 2, and their associates were further required to furnish to ANB written invoices and draw requests which affirmatively represented to ANB the uses to which the requested loan proceeds would be put, namely, for payment of materials or completed

work provided by subcontractors.

14. It was further a part of the scheme and artifice to defraud that, instead of using all of the proceeds of the ANB loan for purchase of the property and construction of the Spyglass/Kennedy Town Center project as promised, UNINDICTED COCONSPIRATOR 1 and UNINDICTED COCONSPIRATOR 2 instructed and caused defendant PATANE to begin diverting hundreds of thousands of dollars in ANB construction loan proceeds to use for UNINDICTED COCONSPIRATOR 1's and UNINDICTED COCONSPIRATOR 2's unrelated personal purposes and other residential construction projects. These diversions of ANB loan proceeds were made in order to complete other Tradewest Homes residential projects that were in peril of foreclosure because there were insufficient funds available to complete them. These diversions from the ANB loan began to immediately threaten the viability of the Spyglass/Kennedy Town Center project and the ability to repay the ANB loan by diminishing the funds available to complete the Spyglass/Kennedy Town Center project.

15. It was further a part of the scheme and artifice to defraud that in order to conceal the diversion of funds from the ANB loan to projects and purposes unrelated to the Spyglass/Kennedy Town Center project, UNINDICTED COCONSPIRATOR 1, UNINDICTED COCONSPIRATOR 2, and defendant PATANE caused to be created and submitted to ANB a series of false and misleading draw requests accompanied by false engineering certifications. The false draw requests and certifications misrepresented to ANB that materials were purchased and work had been completed for phases of the Spyglass/Kennedy Town Center project such as framing, drywall, windows, electrical work, heating and air conditioning, plumbing, roofing, elevator, appliances, countertops and siding, when in truth and fact, nothing above ground level was completed. The Spyglass/Kennedy Town Center project never advanced past the building of the foundation, parking, and stemwall.

16. It was further a part of the scheme and artifice to defraud that after having obtained the release of ANB loan proceeds through false draw requests and certifications, the

funds were diverted for payment of unrelated business and personal purposes of UNINDICTED COCONSPIRATOR 1, UNINDICTED COCONSPIRATOR 2 and defendant PATANE, including: (1) payments to UNINDICTED COCONSPIRATOR 2's unrelated business accounts, including one deceptively bearing the same name, "Spyglass Properties"; (2) payments to fund UNINDICTED COCONSPIRATOR 2'S and UNINDICTED COCONSPIRATOR 1's office expenses, payroll, and unrelated construction projects; (3) defendant PATANE's diversion of loan proceeds to pay off personal mortgages, purchase automobiles, engage in personal travel, pay for private school, and for donations to public events, among other uses; and (4) payments to, and through, bank accounts of R.P. and R.P.'s companies, AMT Construction and Pyramid Construction, through a bank account that defendant PATANE had set up in Nevada under the deceptively similar name, "Spyglass Property".

17. It was further a part of the scheme and artifice to defraud that after having obtained the benefit of almost seventeen million dollars (\$17,000,000) in ANB loan proceeds, including several million dollars obtained through the submission of false and deceptive draw requests and engineering certifications to ANB, UNINDICTED COCONSPIRATOR 1, UNINDICTED COCONSPIRATOR 2, and defendant PATANE abandoned the Spyglass/Kennedy Town Center project with little more than a ground-level slab of cement having been provided, failed and refused to make payments on the ANB loan, and caused material harm to ANB by leaving ANB with a loan secured by the Spyglass/Kennedy Town Center property worth far less than the outstanding loan balance.

COUNT 1
18 U.S.C. § 1343
(Wire Fraud)

18. The allegations set forth in paragraphs 1 through 17 of this Felony Information are incorporated herein by reference as though fully set forth herein.

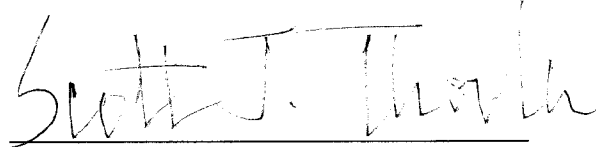
19. On or about May 14, 2007, in the Central Division of the District of Utah, and elsewhere, for the purpose of executing and in furtherance of the scheme and artifice to defraud

more particularly described in paragraphs 1 through 17 of this Felony Information, and for obtaining money and property of ANB by means of false and fraudulent pretenses, representations, and promises, and omissions of material facts, and attempting to do so,

MISIONA PATANE JR.,

defendant herein, did knowingly to transmit and cause to be transmitted, by means of wire communications in interstate commerce, the writings, signs, signals, pictures, and sounds, and did aid and abet, counsel, command, induce, procure, and cause said wire transmission, to-wit: The wiring of approximately \$100,000 in ANB loan proceeds related to construction loan number 128040017 from the ANB Spyglass Properties account number 125011644 (Little Rock, Arkansas) to account number 763005584 of Tradewest Homes at Bank of the West (Sandy, Utah); all in violation of Title 18, United States Code, §§ 1343, and 2.

BRETT L. TOLMAN
United States Attorney

A handwritten signature in black ink, appearing to read "Scott J. Thorley", written over a horizontal line.

SCOTT J. THORLEY
Assistant United States Attorney